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No. 95-105

In the Supreme Court of the United States

OCTOBER TERM, 1995

AMERICAN MUTUAL LIFE INSURANCE COMPANY AND SUBSIDIARIES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Section 809 of the Internal Revenue Code, 26 U.S.C. 809, requires mutual life insurance companies to reduce deductions for policyholder dividends by an amount derived from the excess of the average stock company earnings rate over the average mutual company earnings rate. The question presented is whether Section 809 authorizes a mutual company, in a year in which the average mutual company earnings rate exceeds the average stock company earnings rate, to take a policyholder dividends deduction in an amount that is greater than the actual amount of its dividends.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 43 F.3d 1172. The opinion of the district court (Pet. App. 10a-17a) is unofficially reported at 73 A.F.T.R.2d ¶ 94-301.

JURISDICTION

The judgment of the court of appeals was entered on December 15, 1994. A petition for rehearing was denied on March 21, 1995. Pet. App. 20a. On June 9, 1995, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including July 19, 1995, and the petition was filed on

that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case presents an issue of first impression under Section 809 of the Internal Revenue Code, 26 U.S.C. 809. Section 809, entitled "Reduction in certain deductions of mutual life insurance companies," is the most recent congressional effort to address the problem of the deductibility of dividends paid by mutual life insurance companies to their policyholders. As noted by the court of appeals (Pet. App. 2a), the problem stems from the fact that a mutual insurance company's policyholders are both its customers and its owners. Because of that dual status, it is difficult to determine what portion of a mutual company's dividends to its policyholders represents a price rebate to customers (which is deductible) and what portion represents a distribution of earnings to owners (which is nondeductible). Taxation of stock life insurance companies, which may also distribute dividends to their policyholders as well as their stockholders, does not present that problem, because their policyholders and stockholders are not necessarily the same persons.

The solution adopted by Congress in Section 809 is based on the theory that the excess of the earnings rates of stock life insurance companies (after payment of policyholder dividends but before distribution of dividends to stockholders) over those of mutual companies (after the payment of policyholder dividends) is a reasonable measure of that portion of mutual companies' policyholder dividends that is attributable to the distribution of earnings to policyholders in their capacity as owners. When Congress

enacted Section 809, "the after [policyholder] dividend rates of return on equity for both stock and mutual companies were examined, and it was determined that the average pre-tax return on equity of mutual companies [fell] below that for a comparable group of stock companies. [The Congress] believe[d] that this difference [was] attributable to distribution by mutual companies of earnings to their owners." H.R. Rep. No. 432, 98th Cong., 2d Sess. Pt. 2, at 1422 (1984) (*House Report*); see also H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 1057 (1984) (adopting House provision); Senate Comm. on Finance, 98th Cong., 2d Sess., *Deficit Reduction Act of 1984*, at 548-549 (Comm. Print 1984).

Section 809 operates in conjunction with the rules for deduction of policyholder dividends contained in Section 808 of the Code. Section 808(c)(1) sets forth the general rule providing a deduction to life insurance companies for "policyholder dividends * * * [in] an amount equal to the policyholder dividends paid or accrued during the taxable year." Section 808(c)(2) then limits that deduction for mutual companies by providing that, "[i]n the case of a mutual life insurance company, the deduction for policyholder dividends for any taxable year shall be reduced by the amount determined under section 809."

Section 809(a)(1), in turn, provides that, for mutual companies, "the amount of the deduction allowed under section 808 shall be reduced" by the "differential earnings amount," which is computed under Section 809(a)(3) and 809(c)(1). The "differential earnings amount" for a particular taxable year is derived in two steps. First, the "differential earnings rate" is computed, by calculating the "excess" of the earnings rate of the stock life insurance industry for

the three-year period before the taxable year in question[1] over the post-dividend earnings rate of the mutual life insurance industry for the second calendar year antedating the taxable year in question. 26 U.S.C. 809(c)(1)(B).[2] The "differential earnings rate" is then multiplied by the particular mutual company's "average equity base." 26 U.S.C. 809(a)(3).[3] The product is the differential earnings amount. *Ibid.*

Because the initial reduction of mutual companies' deductions under Section 809(c)(1) for any tax year is based on two-year-old data on mutual companies'

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[1] This figure is known as the "imputed earnings rate." 26 U.S.C. 809(c)(1)(A), 809(d). The imputed earnings rate represents the average of the earnings rates of the 50 largest stock insurance companies for the three-year period antedating the taxable year in question, multiplied by .9055. The legislative history explains that the three-year period was used "to preclude the possibility of sharp rises or declines in the rate of return for the stock segment of the industry, giving the mutual companies some ability to plan for and predict tax costs for purposes of marketing their products." *House Report* 1423. The .9055 figure reflects the fact that Congress chose to adjust future imputed earnings rates by the ratio which the rate that Congress decided was an appropriate rate for 1984 (16.5%) bore to the actual stock rate for 1981 through 1983 (18.221%). 26 U.S.C. 809(d)(1)(B).

[2] The two-year lag in computing the average mutual company earnings rate "is necessary because, for any taxable year, the Secretary will not have the data required to determine the average mutual earnings rate prior to the date a mutual company will file its Federal income tax return." *House Report* 1425.

[3] The "average equity base" (which consists of the company's surplus and capital) is the average of the equity base at the conclusion of the taxable year and the equity base at the conclusion of the prior taxable year. 26 U.S.C. 809(b)(1) and (2).

earnings, the Code requires an adjustment in the following year, after information has become available about the mutual earnings rate for the year in which the dividends in question were paid or accrued. 26 U.S.C. 809(f)(3). Specifically, Section 809(f)(3) requires the calculation of a "recomputed differential earnings amount," which is computed in the same manner as the original differential earnings amount is calculated under Section 809(c)(1), but using the up-to-date information about the average mutual company earnings rate for the taxable year. Under Section 809(f)(2), if the original differential earnings amount exceeds the recomputed differential earnings amount, "such excess shall be allowed as a life insurance deduction for the succeeding taxable year"; the adjustment compensates the company for its excessive reduction of its policyholder dividend deduction in the original taxable year. Conversely, if the recomputed differential earnings amount exceeds the original differential earnings amount, "such excess shall be included in life insurance gross income for the succeeding taxable year," to compensate the government for the excessive deduction taken in the original taxable year. 26 U.S.C. 809(f)(1).

2. Petitioner is a mutual life insurance company that paid or accrued $13,985,737 in policyholder dividends in 1986. On its 1986 federal income tax return, petitioner reported a "differential earnings amount" of $9,826,925, based on mutual companies' earnings data for 1984. Accordingly, petitioner reduced its policyholder dividends deduction for 1986 to $4,158,812 ($13,985,737 minus $9,826,925). Pet. App. 4a.

On its 1987 federal income tax return, petitioner reported a *negative* "recomputed differential earnings amount." Pet. App. 4a. The negative figure

reflected the fact that, contrary to Congress's expectation, the imputed (stock company) earnings rate in 1986 was *less* than the average mutual company earnings rate for the same year (which became available during 1987). Petitioner contended that the (recomputed) "differential earnings rate" (defined in Section 809(c)(1) as the "excess" of the stock earnings rate over the mutual earnings rate) therefore was *negative* 1.7%.[4] That negative differential earnings rate, in turn, yielded a recomputed differential earnings amount of *negative* $1,580,476. As noted above, petitioner's original differential earnings amount for 1986 was $9,826,925. Using those two differential earnings figures, petitioner claimed an adjusted policyholder deduction for 1987 of $11,407,401, which (petitioner claimed) represented the "excess" of $9,826,925 over -$1,580,476. *Id.* at 4a-5a. Because petitioner had already taken a $4,158,812 "policyholder dividends deduction" in 1986, petitioner, in effect, claimed deductions totaling $15,566,213 with respect to its policyholder dividends for 1986, even though it paid or accrued only $13,985,737 in policyholder dividends during that year. *Ibid.*

Petitioner's computation engendered a loss for 1987, which it attempted to carry back to offset income earned during the 1984 taxable year. Pet. App. 13a. Petitioner then filed a claim with the Internal Revenue Service (IRS) seeking a refund of $729,163 in tax paid for 1984, plus interest. *Id.* at 14a. After the

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[4] The imputed earnings rate for taxable year 1986 was 16.285%. Rev. Rul. 87-92, 1987-2 C.B. 165, 166. The mutual earnings rate for that year was 17.980%. Rev. Rul. 88-80, 1988-2 C.B. 129, 130.

IRS denied the refund claim, petitioner filed a refund suit in district court.

3. The district court granted petitioner's motion for summary judgment. Pet. App. 10a-17a. The court rejected the government's argument that the adjustment to the deduction set forth in Section 809(f)(2) must be interpreted in conjunction with Section 808(c), which limits a mutual company's policyholder dividends deduction to the amount of dividends paid or accrued during the taxable year. Pet. App. 16a. It therefore concluded that petitioner was entitled to deduct the entire $11,407,401 that it claimed as a life insurance deduction for 1987. *Id.* at 17a.

Shortly after the district court's decision, the Department of the Treasury, acting pursuant to prior published notice,[5] issued a regulation providing in part that "[n]either the differential earnings rate under section 809(c) nor the recomputed differential earnings rate that is used in computing the recomputed differential earnings amount under section 809(f)(3) may be less than zero." Treas. Reg. § 1.809-9(a).[6] The regulation is effective for all taxable years beginning after December 31, 1986. Treas. Reg. § 1.809-9(c).

4. The court of appeals reversed the district court's decision on two independent grounds. Pet. App. 1a-9a. The court first agreed with the govern-

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[5] See Notice 88-106, 1988-2 C.B. 444, 445; Rev. Rul. 88-80, 1988-2 C.B. 129, 130; Notice of Proposed Rulemaking, 1992-2 C.B. 680.

[6] The accompanying statement explains that, "[w]henever the average mutual earnings rate is greater than the imputed earnings rate, there is no 'excess of' the imputed rate over the average mutual earnings rate." T.D. 8499, 1993-2 C.B. 246.

ment that Section 808(c) limits the deduction that a mutual company may take, under Section 809, with respect to policyholder dividends paid or accrued in a given year, to the total amount of those dividends. Pet. App. 6a. The court of appeals noted that Section 805 specifically provides that deductions "in respect of policyholder dividends" are subject to the limitations imposed by Section 808, and it observed that the Section 809 deduction sought by petitioner in this case "functions as an adjustment 'in respect of policyholder dividends.'" *Ibid.* Hence, the court concluded, "the requirements of section 808(c) must apply to section 809." *Ibid.*

The court also held that the plain language of Section 809(c)(1) precludes a negative recomputed differential earnings rate. Pet. App. 7a. The court noted that the statute defines the recomputed differential earnings rate to be the "excess" of the imputed (stock company) earnings rate over the average mutual company's earnings rate. It concluded that Congress "expected, and thus intended, that 'excess' would be a positive number," and it observed that "[t]he term 'excess' * * * is more susceptible to a reading as a positive number than as a negative number." *Ibid.* The court rejected petitioner's argument that an alleged special insurance industry understanding of the term "excess" should apply, stating that "[l]anguage used in tax statutes should be read in the ordinary and natural sense." *Ibid.*[7]

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[7] The court of appeals concluded that Treasury Regulation § 1.809-9 provides a reasonable interpretation of the statute (Pet. App. 8a) but stated that its decision would have been the

ARGUMENT

The court of appeals correctly concluded that Section 809 does not permit a mutual life insurance company to receive a deduction for policyholder dividends in excess of the dividends that it actually paid or accrued during the taxable year. That decision does not conflict with any decision of this Court or of any other court of appeals. Further review therefore is not warranted.

1. a. Section 809(c)(1) provides that the recomputed differential earnings rate shall be the "excess" of the imputed (stock company) earnings rate over the average mutual earnings rate (adjusted to reflect accurate mutual company earnings data for the taxable year, see 26 U.S.C. 809(f)(3)). The court of appeals correctly concluded that the Internal Revenue Code's use of the term "excess" does not permit a negative recomputed differential earnings rate. In construing the Code, courts "look to the 'ordinary, everyday senses' of the words" used therein, *Commissioner* v. *Soliman*, 113 S. Ct. 701, 705 (1993), and, as the court of appeals observed (Pet. App. 7a), the generally accepted understanding of "excess" is limited to positive figures. One dictionary defines "excess" as "the amount or degree by which one thing or number exceeds another," *Webster's Third New International Dictionary* 792 (1986) (def. 1c), and provides, as an example of the usage of "excess," the following: "[T]he [excess] of 12 plus 2 over 12 minus 2 is 4." *Ibid.* The same dictionary further defines

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same even if it had accepted petitioner's contention that the regulation should be disregarded in this case (*id.* at 9a).

"exceed" as "to be greater than or superior to: SURPASS." *Id.* at 791 (def. 2a).

Those definitions demonstrate that there is no "excess" of the imputed earnings rate over the average mutual earnings rate when the former is less than the latter. The commonly accepted characterization of the relation between numbers is that 16.285 (the imputed stock mutual earnings rate for 1986) is *less than* 17.980 (the mutual earnings rate for the same year), by 1.695. That characterization is directly at odds with the notion that an "excess" of A over B can exist when A is less than B, for "to be less than" is the opposite of "to be greater than," one of the definitions of "exceed." An antonym should ordinarily not be read as a synonym in construing a statute.

b. The court's rejection of a negative meaning for "excess" in Section 809(c)(1) is consistent with the Code's use of the same term in Section 809(f). See *Commissioner* v. *Keystone Consol. Indus., Inc.*, 113 S. Ct. 2006, 2011 (1993) ("[I]dentical words used in different parts of the same act are intended to have the same meaning."). Section 809(f) provides, in pertinent part, as follows:

> **(f) Recomputation in subsequent year**
>
> **(1) Inclusion in income where recomputed amount greater**
>
> In the case of any mutual life insurance company, if—
>
> (A) the recomputed differential earnings amount for any taxable year, exceeds
>
> (B) the differential earnings amount determined under this section for such taxable year,

such excess shall be included in life insurance gross income for the succeeding taxable year.

(2) Deduction where recomputed amount smaller

In the case of any mutual life insurance company, if—

(A) the differential earnings amount determined under this section for any taxable year, exceeds

(B) the recomputed differential earnings amount for such taxable year,

such excess shall be allowed as a life insurance deduction for the succeeding taxable year.

(Emphasis added.) Those mirror-image provisions clearly indicate that Congress understood and intended an "excess" to be a positive figure. Section 809(f)(1) states that, when the recomputed differential earnings amount is *greater than* ("exceeds") the differential earnings amount, "such excess," a positive figure, shall be added to life insurance gross income for the succeeding taxable year. Section 809(f)(2) states conversely that, when the differential earnings amount is *greater than* ("exceeds") the recomputed differential earnings amount, "such excess," a positive figure, shall be subtracted from life insurance gross income for the succeeding taxable year. The language and structure of Section 809(f) thus reveal that Congress understood that there is no "excess" of A over B unless A is greater than B.[8]

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[8] Congress's understanding of "excess" as a positive figure is also reflected in Section 809(a). Section 809(a)(1) provides that "the amount of the [policyholder dividends] deduction allowed under section 808 shall be reduced (but not below zero)

c. Finally, the court of appeals' decision is supported by a common-sense understanding of Congress's intent in enacting the statute, as reflected in Section 809's headings. Section 809 is titled, "Reduction in certain deductions of mutual life insurance companies." Section 809(a)(1) then provides the "[g]eneral rule" for reductions, with reference to "[p]olicyholder dividends." Those headings reinforce the court of appeals' conclusion that Congress intended Section 809 to operate as a limitation on mutual life insurance companies' deductions for policyholder dividends. While the headings of a statute cannot override a clear statutory text to the contrary, they can be used to dispel lingering uncertainty about the meaning of a statute, especially where, as here, the headings demonstrate that Congress intended the statute to have a "limited function." *Mead Corp.* v. *Tilley*, 490 U.S. 714, 723 (1989); see *Maguire* v. *Commissioner*, 313 U.S. 1, 9 (1941). The headings of Section 809 confirm that Congress did not intend mutual insurance companies to increase their deductions *above* the amount that they paid out in policyholder dividends. Cf. *United States* v. *Skelly Oil Co.*, 394

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by the differential earnings amount." Section 809(a)(2) further provides that, "if the differential earnings amount exceeds the amount allowable as a deduction under section 808 for the taxable year[,] * * * such excess shall be taken into account under subsections (a) and (b) of section 807," with respect to a mutual company's reserve deduction. The term "excess" in Section 809(a)(2) clearly refers to a positive figure, *viz.*, the amount by which the differential earnings amount is greater than the amount of the policyholder dividends deduction. Where the differential earnings amount is *less than* the amount of the policyholder dividends deduction, that deduction is not reduced below zero, and Section 809(a)(2) does not operate.

U.S. 678, 684 (1969) (rejecting approach that would allow taxpayer a total of $1.27 in deductions for every $1 refunded to its customers). If Congress had intended to grant mutual companies a windfall tax deduction, it would not have done so through a provision that, by its own terms, is intended to reduce their deductions. Cf. *Colonial American Life Ins. Co.* v. *Commissioner*, 491 U.S. 244, 260 (1989) ("We find it incredible that Congress * * * would have tucked away * * * a deduction of this magnitude.").

2. The court of appeals' alternative holding, that the recalculation deduction provided in Section 809(f)(2) is subject to the limitation established in Section 808—which does not permit a mutual company to deduct more than it paid out in policyholder dividends during a particular year—is also correct. Section 804 sets forth the "life insurance deductions" available to life insurance companies, including "the general deductions provided in section 805." 26 U.S.C. 804(1). The final sentence of Section 805(a) expressly provides that "no amount shall be allowed as a deduction * * * in respect of policyholder dividends," except as provided in Section 805(a)(3). Section 805(a)(3), in turn, incorporates the policyholder dividends deduction "determined under section 808(c)." Because the recalculation deduction provided in Section 809(f)(2) is simply a modification of the Section 808(c) policyholder dividends deduction that was calculated in the prior year, it functions as an adjustment "in respect of policyholder dividends." It is therefore subject to the restrictions of Section 808, under the plain language of Section 805. And, under Section 808, the policyholder dividend deduction is limited to "an amount equal to the policyholder dividends paid or accrued during the taxable year." 26

U.S.C. 808(c)(1). Petitioner's attempt to take a dividend deduction in excess of the amount of its dividends therefore contravenes Sections 805 and 808.

The limitation of Section 809 by Section 808 is also apparent from the language of those two Sections. Section 808(c), after setting forth the deduction for policyholder dividends, provides that the deduction "shall be reduced by the amount determined under section 809." 26 U.S.C. 808(c)(2). Section 809(a)(1), in turn, states that "the amount of the deduction allowed under section 808 shall be reduced * * * by the differential earnings amount." Those two sentences make clear that the function of Section 809 is to reduce, not to increase, the deduction allowed in Section 808.

The contrary reading advocated by petitioner effectively reduces Section 808 "to trivial application." *United States* v. *Nordic Village, Inc.*, 503 U.S. 30, 35 (1992). Section 808(c) limits the policyholder dividends deduction to the amount of dividends actually paid or accrued during the taxable year, but, under petitioner's reading, that restriction would be effective only for the year (here, 1986) in which the (essentially temporary) differential earnings amount is computed. The restriction would be neutralized when the recomputed differential earnings amount is determined in the following year.

Finally, petitioner's attempt to gain support from the fact that Congress called the Section 809(f)(2) recalculation deduction a "life insurance deduction" rather than a "policyholder dividends deduction" is wide of the mark. The term "life insurance deduction" includes both the policyholder dividends deduction (Sections 804(1) and 805(a)(3)) and the reserve deduction (Sections 804(1) and 805(a)(2)).

Congress's use of the broader term reflects the fact that, on occasion, the original year's differential earnings amount may have reduced the reserve deduction as well as the policyholder dividends deduction.

3. Petitioner contends (Pet. 6-9, 22, 25) that, as a matter of policy, allowing mutual companies to take dividend deductions exceeding their dividends produces a statistically correct reduction in the mutual industry's deductions over time. In essence, petitioner contends that Congress was willing to grant the mutual industry a windfall deduction in some years on the assumption that the amounts of deductions would even out over time. See Pet. 8. As the court of appeals observed in rejecting that argument, however, "there is no evidence that this was what Congress had in mind." Pet. App. 8a.[9] Even if an economic case could be made to Congress for allowing petitioner the windfall deduction that it seeks, petitioner's policy argument cannot surmount the fundamental limitation on policyholder dividend deductions placed by Congress in the Code: Life

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[9] The fallacy in petitioner's argument is further revealed by the fact that Section 809 compares noncurrent data (from one to three years before the taxable year) about stock insurance companies with data about mutual companies that are current (after application of the Section 809(f) recalculation). If Congress had been concerned about achieving petitioner's concept of statistical purity, it would not have required a comparison of earnings rates from different periods. Congress evidently decided that any disadvantage to mutual companies from an imprecise matching of years was outweighed by the benefit to them of the elimination of any possible "sharp rises or declines in the rate of return for the stock segment of the industry, giving the mutual companies some ability to plan for and predict tax costs for purposes of marketing their products." *House Report* 1423.

insurance companies cannot take deductions for dividends that exceed the actual amount of their dividends in the same year.

4. Petitioner stresses (Pet. 28-29) that the IRS had issued notices and rulings indicating that the "excess" in Section 809(c)(1) may be negative. The IRS subsequently conformed its position, however, to the correct reading of the statute. Petitioner points to no authority forbidding the government to correct an erroneous interpretation of the law.[10] See *Dickman* v. *Commissioner*, 465 U.S. 330, 343 (1984); cf. *OPM* v. *Richmond*, 496 U.S. 414 (1990) (government cannot be estopped to deny disability benefits that were not otherwise permitted by law because of erroneous advice given by government employee). Petitioner's reliance (Pet. 21, 23-24, 28) on the 1989 Treasury Department Report to Congress on the operation of Section 809 is also misplaced. The 1989 Report did not purport to interpret the language of

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[10] Originally, in March 1988, the IRS reported that the tentative recomputed differential earnings rate for 1986 was "-1.700." Announcement 88-47, 1988-12 I.R.B. 56. Later in the same year, the IRS changed its view and took the position that there could not be a negative rate. Notice 88-106, 1988-2 C.B. 444; Rev. Rul. 88-80, 1988-2 C.B. 129. Although continuing to assert that there could not be a negative rate, the IRS did include statements in rulings that, "[b]ut for the rule described in Notice 88-106," a particular rate would be a specified negative number. See, *e.g.*, Rev. Rul. 89-106, 1989-2 C.B. 109. Ultimately, in the preamble to the final regulations, the Treasury stated that, "[w]henever the average mutual earnings rate is greater than the imputed earnings rate, there is no 'excess of' the imputed earnings rate over the average mutual earnings rate," and thus concluded that a negative rate is precluded by the statutory formula itself. T.D. 8499, 1993-2 C.B. 246.

Section 809; rather, it discussed perceived problems with the statute as enacted. As is clear from the promulgation of Treasury Regulation § 1.809-9 in December 1993, the Treasury Department does not believe that Section 809 should be interpreted as allowing mutual companies to deduct more than they pay out. Thus, the Treasury's now-definitive published interpretation, the decision below (the only appellate decision on the question), and the plain language of the statute are all in agreement.

5. Finally, petitioner contends (Pet. 29-30) that the Court should grant certiorari, even in the absence of an intercircuit conflict, because of the amount of money at issue. That contention is without merit. Although the Court has, on occasion, granted certiorari in large tax cases in the absence of a conflict in the circuits, such as *United States* v. *Goodyear Tire & Rubber Co.*, 493 U.S. 132 (1989), and *United States* v. *Hill*, 113 S. Ct. 941 (1993), those cases involved demonstrably incorrect decisions, adverse to the government, of the United States Court of Appeals for the Federal Circuit, which has national jurisdiction in appeals in tax refund cases. Because, in *Goodyear* and *Hill*, every taxpayer could take advantage of the Federal Circuit's decisions by filing a refund suit in the Court of Federal Claims, the Federal Circuit's decisions in those cases effectively constituted the law of the land, in the absence of review by this Court.[11]

The same situation does not exist with respect to the issue presented in this case. The decision below

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[11] See also our pending petition for a writ of certiorari in *United States* v. *Xerox Corp.*, No. 94-2005 (filed June 7, 1995), similarly seeking review of a Federal Circuit decision.

is binding only in the Eighth Circuit, and even other companies located there can bring the issue to the Court of Federal Claims and then to the Federal Circuit. Indeed, another case presenting the same issue is pending in the United States District Court for the Southern District of Indiana. *Indianapolis Life Ins. Co. & Subsidiary* v. *United States*, No. 95-770. In the absence of any disagreement among the courts of appeals on the issue presented in this case, further review of the issue is not warranted.[12]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[12] The third case cited by petitioner, *Harrison* v. *Northern Trust Co.*, 317 U.S. 476 (1943), involved an unusual situation. In that case, the Seventh Circuit elected to follow a prior decision of this Court, *Edwards* v. *Slocum*, 264 U.S. 61 (1924), that had been overruled by a subsequent statute. Because the Seventh Circuit's decision was plainly contrary to the amended statute, and because the question was of substantial fiscal importance, the government sought review by this Court.